

Questions and Answer on Bristol Bay – 02/04/11 – 4:45pm draft

- 1. Is EPA invoking Clean Water Act section 404(c) with regard to the potential Pebble Mine?**
Not at this time. EPA is not taking a preemptive action on the potential Pebble Mine or preparing a position on any future action.

Some stakeholders want EPA to use its authority under Clean Water Act Section 404(c) now to protect Bristol Bay from large-scale development like the potential Pebble Mine, while others want projects to proceed through the standard federal and state permit decision-making processes before any decisions are made.

EPA's watershed analysis is focused on the effects of large-scale development in general—not just the potential Pebble Mine. The agency is initiating this analysis to evaluate if Section 404(c) would be an appropriate tool to use in Bristol Bay and what role EPA would play in future permitting.

EPA wants to hear from everyone with an interest in the Bristol Bay watershed, its people and natural resources. The agency is listening and considering all perspectives on this issue.

- 2. What is Clean Water Act Section 404 (c)?**

Clean Water Act Section 404(c), authorizes EPA to restrict, prohibit, deny, or withdraw the use of a water body as a disposal site for dredged or fill material—such as mining waste—if the discharge will have adverse effects on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

Section 404(c) authority may be exercised before a permit is applied for, while an application is pending, or after a permit has been issued.

- 3. What is the scope of the analysis? Is EPA going to evaluate the entire Bristol Bay watershed?**

EPA is initiating a scientific study of the Bristol Bay watershed with an eye toward water quality. The purpose of the study is to assess the salmon populations of Bristol Bay and examine the risks posed by potential large scale development within the watershed.

The Bristol Bay fishery is an important source of wild Pacific salmon for commercial, recreational, and subsistence users. It produces hundreds of millions of dollars in annual fisheries revenues. Most of the Bristol Bay watershed is wildlife refuge or park where large development is restricted, so the study will focus on the unrestricted portions that include the Nushagak and Kvichak watersheds.

- 4. Why is EPA doing this analysis? Why now, before it has received a mine proposal?**

EPA is initiating a Bristol Bay watershed analysis in response to nine federally recognized tribes and other stakeholders who have asked us to take action to protect Bristol Bay's salmon fishery and other tribes and stakeholders that asked us to allow the typical permit process to take its course. The first group expressed concern that the salmon resources of the watershed are at risk from large scale mining. The second group recommended waiting because more information will be available among other reasons. This watershed assessment will allow us to collect information to evaluate the merits of both requests.

The agency needs to evaluate the degree of risk and developers' ability to mitigate it. The watershed analysis and the public outreach effort will help EPA in responding to these requests.

The CWA anticipates situations where site specific protections should be established before a project has been proposed. The 404(c) regulations support evaluation of exceptional resources in advance of a project proposal. The salmon resources of Bristol Bay may be an exceptional resource. The regulations point out that an advanced application of protection under 404(c) would allow a developer to understand the expectations for moving ahead with a project.

5. How does this relate to the potential Pebble Mine?

All of the requests to initiate the Clean Water Act 404(c) process have expressed concern with metallic sulfide mining or a potential Pebble Mine. EPA will evaluate all potential large-scale development in the watershed, including mining.

EPA will focus primarily on the ecosystem and biological drivers that support the size and resiliency of the Bristol Bay fishery, notably water quality, and if those drivers are vulnerable to impacts from large scale development activities. If the results of this analysis lead EPA to put protections in place to ensure the sustainability of the fishery and/or other important resources, activities like the potential Pebble Mine would be subject to those protections.

6. What questions does EPA aim to answer with this watershed analysis?

EPA will focus primarily on short and long term adverse effects of large scale development on salmon and other important resources.

We will review existing information on the salmon of Bristol Bay and known or probable development in the area.

The questions we want to answer with this analysis are:

- Is the Bristol Bay salmon fishery a one-of-a-kind, world class fishery?
- What are the existing and potential risks to Bristol Bay's salmon fishery associated with large-scale development activities such as hard rock mining?
- Are there technologies or practices that will mitigate these risks?

7. How will the public be involved?

EPA is committed to involving the Alaskan people and stakeholders in discussions. The agency has already heard varying perspectives.

EPA is developing a process where it will present information from the watershed analysis and invite the public to present additional information. EPA is also planning public meetings.

8. How will tribes be involved and will consultation occur?

EPA will consult with federally recognized tribes and would like to work with the tribes to develop a tribal consultation plan that includes an appropriate timeline for them. EPA will also invite tribal knowledge of the Bristol Bay watershed analysis as part of its watershed analysis.

9. How long will this watershed analysis take and when can we expect to see results?

EPA hopes to have results from this watershed analysis later this year.

10. Will EPA collect subsistence data and traditional knowledge?

Yes. EPA is reviewing documented subsistence and traditional knowledge. When the agency has completed this review it will consult with tribes to determine if more information is needed. If necessary, EPA will work with the tribes to collect additional information in a manner that respects traditional knowledge protocols.

11. Will this affect other mining prospects in Alaska? Are you setting a precedent by doing this?

No. Each mining prospect has a set of unique circumstances that dictates the nature of the review. The context of Bristol Bay creates a set of circumstances that exists nowhere else to our current knowledge. EPA has reviewed all other Alaska mines under the same set of laws and regulations and has never taken this step.

12. Would EPA be more accepting of mining methods that would have fewer impacts on the Bristol Bay watershed?

EPA has not made a determination that mining will have unacceptable adverse impacts on the Bristol Bay watershed. The agency will evaluate risks of potential mining, other types of development and best practices that can be put in place to mitigate impacts. This will allow EPA to determine whether the watershed value and potential risks warrant starting a 404(c) process.

13. Is EPA working with the State of Alaska to develop a plan to assess the watershed? Does the state have a role in this?

EPA has been talking with the state of Alaska's natural resource agencies and welcomes their assistance in this effort.

EPA is also seeking expertise from federal resource agencies and tribes. The final responsibility for making a decision on how to proceed rests with EPA.